Office of Governmental Affairs
P.O. Box 942720
Sacramento, CA, 94229-2720
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3689, Fax (916) 795-3270

June 18, 2008

AGENDA ITEM 3a

TO: MEMBERS OF THE HEALTH BENEFITS COMMITTEE

I. SUBJECT: Assembly Bill 1203 (Salas) - As Amended January 17, 2008

Health Care Service Plans: Poststabilization Care

II. PROGRAM: Legislation

III. RECOMMENDATION: Support

This bill would protect CalPERS members from medical billing disputes between a non-contracting hospital and a CalPERS health plan for post-stabilization health care services.

IV. ANALYSIS:

This bill would prohibit a non-contracting hospital from billing any health plan enrollee for post-stabilization care if the hospital fails to contact the health plan to obtain authorization to provide poststabilization care.

Background

Balance Billing

Balance billing occurs when a health care provider charges a patient the difference between what the patient's health plan reimburses for a service and what the provider charges. For example, a health plan may pay $400 for a specific procedure for which the provider regularly charges $600. If the provider accepts the health plan's payment and bills the patient $200 to make up the difference, the provider has balance-billed the patient.

Current law prohibits health care providers contracting with health plans from seeking any payment from patients, other than agreed upon co-payments, co-insurance or deductibles, for services covered by the health plan. Under the health plan contract, the provider often has agreed to accept a discounted reimbursement rate as payment in full for all covered services provided to enrollees of that health

plan. The provider, therefore, has no recourse to seek additional compensation for those services from the patient through balance billing. Any disputes regarding reimbursement must be addressed with the health plan.

Current law does not prevent balance billing by health care providers who have not entered into a contract with a health plan.

Emergency and Poststabilization Hospital Care

The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law passed in 1986 that was enacted to combat the practices of patient dumping, treatment denial, and patient discharge based on anticipated high treatment costs. Hospitals are required to provide appropriate screening examinations to determine whether emergency medical conditions exist, regardless of patients' ability to pay. When emergency medical needs are identified, EMTALA requires hospitals to stabilize patients. This bill addresses care once a patient has been stabilized.

Proposed Changes

Assuming that this bill is enacted into law, when a patient has coverage for emergency and post-stabilization care and receives that care at a non-contracting hospital, the hospital will not be able to bill the patient for the post-stabilization health care services if the hospital did not contact the patient's health care plan to authorize those services. The patient would still be responsible for applicable co-payments and cost shares. The bill defines "emergency health care services and poststabilizing care" as emergency services and out-of-area emergency services provided in an emergency department and a hospital, through discharge. It further defines "post-stabilization care" as necessary medical care following stabilization of an emergency medical condition.

Legislative History

2007 AB X1 1 (Nunez) - Would have created a statewide health care system and included a provision to establish a Health Care Cost and Quality Transparency Committee similar to AB 2967. AB X1 1 died in committee. [CalPERS position: None]

2007 SB 389 (Yee) - The bill would have required a hospital-based physician practicing in a contracting hospital to seek reimbursement solely from the patient's health plan or medical group and would have prohibited them from seeking payment directly from a patient for services covered by the patient's health plan. The bill failed to pass into Senate consideration. *CalPERS' Position: Support*

2005 AB 1321 (Yee) – Would have required a hospital-based physician practicing in a contracting hospital to seek reimbursement solely from the patient's health plan or medical group. Hospital-based physicians would have been prohibited from seeking payment directly from a patient for services covered by the patient's health plan. The bill died in committee. *CalPERS' Position: Support*

2005 SB 417 (Ortiz) – Would have prohibited hospital-based physicians from billing patients with health insurance any amount other than applicable co-payments, unless the provider has been denied payment by the patient's insurer. *CalPERS' Position: None*

2004 AB 2389 (Koretz) – Would have required a health plan insurer that owns or contracts with a PPO to pay a non-contracting physician and surgeon a reasonable and customary fee for certain services provided. This bill would have prohibited physicians and surgeons from balance billing enrollees. The Senate amended the bill to pertain to food labeling. *CalPERS' Position: None*

2003 Chapter 583 (AB 1628, Frommer) - Requires a hospital to contact an enrollee's health plan to obtain the enrollee's medical record information before admitting the enrollee for post-stabilization care as an inpatient following emergency services in a non-contracting hospital and prohibits a hospital from billing the enrollee if it fails to make this contact. *CalPERS' Position: None*

2000 Chapter 827 (AB 1455, Scott) - Prohibits health plans from engaging in unfair payment patterns in the reimbursement of providers. Requires health plans to make their dispute resolution process available to non-contracting providers. *CalPERS' Position: None*

Issues

1. Arguments by Those in Support

   According to the author, hospitals and health plans have traditionally been able to make the system work for the benefit of individuals with health care coverage. Non-contracted, or out-of-network hospitals, have typically allowed post-stabilization transfers to in-network facilities or provided care for those enrollees with the knowledge of the health plan.

   Recently, however, there has been a growing trend whereby hospitals are acquired and subsequently cancel all existing contracts of the previous ownership. These contracts include health plan contracts. In the absence of a contract, a hospital is able to charge higher rates. The author indicates that this often means that the hospital bills charged to patients and their health plans are much higher and more expensive than previously contracted before the change in ownership. According to the author, this practice leads to ever-rising higher

costs in health care. Additionally, once a hospital is purchased, health plans have little opportunity to make appropriate arrangements for their enrollees. The end result is that enrollees can be kept in facilities that are not in their coverage network, which in turn could lead to a disruption in care and subject them to billing disputes between a non-contracted hospital and their health plan.

Organizations in Support: Blue Shield of California; California Association of Health Plans; Kaiser Permanente Medical Care Program (prior version); American Federation of State, County and Municipal Employees, AFL-CIO; Association of California Life and Health Insurance Companies; Blue Cross of California; Health Access California; Local Health Plans of California; Service Employees International Union

2. Arguments by Those in Opposition

The California Hospital Association (CHA) opposes this bill arguing that it duplicates a similar provision in AB 1X 1 (Nunez), but fails to include related and critical provisions from AB 1X 1. Specifically, CHA argues that the provisions in AB 1X 1 increasing hospital rates under the Medi-Cal program and requiring all individuals to have and maintain health coverage will reduce uncompensated care. CHA further argues that existing law already prohibits non-contracting hospitals from balance billing patients when they fail to contact the patient's health plan to obtain authorization for poststabilization care. CHA argues that this bill favors health plans at the expense of hospitals.

Organizations in Opposition: California Hospital Association, Sharp HealthCare (prior version), Prime Healthcare Services, Inc.

3. Contracted and Non-Contracted Hospitals and Payment

Under current law, all health plan contracts with providers are required to include a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan. Health plans must ensure that a dispute resolution mechanism is accessible to non-contracting providers for the purpose of resolving billing and claims disputes. Current law also requires that if the plan fails to pay for health care services, the enrollee is not liable to the provider for any sums owed by the plan. However, existing law does not prevent a provider from billing the patient if the provider has no contract with the plan. Regulations by DHMC have been promulgated in response to the governor's Executive Order regarding balance billing. Those regulations have not yet been finalized but address a variety of issues including interim payment rates, reimbursement factors, the role of reasonable and customary charges, and revising the arbitration process.

4. Legislative Policy Standards

The Board's Legislative Policy Standards do not specifically address the issues in this bill. The Board's 2007-08 Health Legislative Priorities, however, suggest a support position on proposals that seek to protect patients from undue pressures during provider-plan contract negotiations or network disruptions. This bill provides an important consumer protection pertaining to the complex contractual relationship between health plans and hospitals.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

Non-contracting hospitals would be prohibited from billing any patient, who has coverage for emergency and post-stabilization health care services, for those services except for applicable co-payments and cost sharing.

Program Costs

There is the potential for increased program costs but at this time the costs are unknown.

Administrative Costs

This bill will not impact CalPERS' administrative costs.

Wendy Notsinneh, Chief
Office of Governmental Affairs

Gloria Moore Andrews
Deputy Executive Officer – Operations

Gregory A. Franklin
Assistant Executive Officer
Health Benefits Branch